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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/595,056

01/20/2006

Michael Steffen

72.105

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23598 7590 05/07/2010
BOYLE FREDRICKSON S.C.
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EXAMINER

SORKIN, DAVID L

ART UNIT

PAPER NUMBER

1797

NOTIFICATION DATE

DELIVERY MODE

05/07/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@boylefred.com

Office Action Summary	Application No. 10/595,056	Applicant(s) STEFFEN, MICHAEL	
	Examiner DAVID L. SORKIN	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 15-22 is/are pending in the application.
- 4a) Of the above claim(s) 7-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 15-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03 May 2010 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 20-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what the corresponding structure for the limitation "operating state change means for automatically reversing the direction of the electric motor at periodic time intervals...". According to the originally filed application, for example original claim 1, the term "operating state change device" collectively refers to elements 6-1, 6-2, 8, 9 and 10, which element 9 is the automatic operation switch. However, it is unclear if the new means-plus-function corresponds to these five elements in combination, or if some subcombination(s) thereof would be considered corresponding structure(s).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-6 and 15-22 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 00/61344 (which corresponds to Jordan et al US 6,808,384; all column and line number herein below are those of the English language US document). Jordan discloses a device comprising an electric motor (4); a vibrator housing (1); a rotatable imbalance device (8); and a main switch (see col. 4, line 54). No other structural elements are positively recited as required elements of the claimed structure in claim 1. As held in *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987) “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus”. Nonetheless, Jordan discloses an operating state change device (see 4, lines 21-56: “frequency converter”, “switch housing”, “a switch from reversing the direction of rotation”). Regarding claims 15 and 16, Jordan further discloses another switch in addition to the mains switch (see col. 4, lines 52-56). Regarding claims 17-22, Jordan discloses a device comprising an electric motor (4); a vibrator housing (1); a rotatable imbalance device (8); a main switch (see col. 4, line 54); and an operating state change device (see 4, lines 21-56: “frequency converter”, “switch housing”, “a switch from reversing the

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direction of rotation"). Jordan further discloses another switch in addition to the mains switch (see col. 4, lines 52-56).

Response to Arguments and Declaration

6. Applicant's remarks concerning the section 112, second paragraph rejection do not point out what the corresponding structure for the "operating state change means for automatically reversing..." is or are. Applicant mentions automatic operation switch 9, but according to dependent claim 21 this is something "further" that what claim 20 requires.

7. Claim 1 lists four parts that claimed device comprises, an electric motor, a vibrator housing, an imbalance device and a main switch. The operating state change device is not one of these parts and instead is mention in the claim as something "by which that internal vibration device is able to be operated". As the operating state change device is not one of the required elements of the claim, but instead is something with which the claimed device can be used during an intended operation, reference not disclosed such a device can still anticipate the claim.

8. The declaration focuses on the act of automatically periodically reversing the direction of rotation, rather than the structure claimed.

9. Applicant fails to point out a structural difference between the claimed switches and the switches of Jordan.

Conclusion

10. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the

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grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **DAVID L. SORKIN** whose telephone number is (571)272-1148. The examiner can normally be reached on Mon.-Fri. 7:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter D. Griffin can be reached on 571-272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DAVID L. SORKIN/
Primary Examiner, Art Unit 1797